

report regarding its FSS program. The report shall include the following information:

- (a) A description of the activities carried out under the program;
- (b) A description of the effectiveness of the program in assisting families to achieve economic independence and self-sufficiency;
- (c) A description of the effectiveness of the program in coordinating resources of communities to assist families to achieve economic independence and self-sufficiency; and
- (d) Any recommendations by the HA or the appropriate local program coordinating committee for legislative or administrative action that would improve the FSS program and ensure the effectiveness of the program.

## PART 990—ANNUAL CONTRIBUTIONS FOR OPERATING SUBSIDY

### Subpart A—Performance Funding System

Sec.

- 990.101 Purpose.
- 990.102 Definitions.
- 990.103 Applicability of PFS.
- 990.104 Determination of amount of operating subsidy under PFS.
- 990.105 Computation of allowable expense level.
- 990.106 Transition funding for excessively high-cost PHAs.
- 990.107 Computation of utilities expense level.
- 990.108 Other costs.
- 990.109 Projected operating income level.
- 990.110 Adjustments.
- 990.111 Submission and approval of operating subsidy calculations and budgets.
- 990.112 Payments procedure for operating subsidy under PFS.
- 990.113 Payments of operating subsidy conditioned upon reexamination of income of families in occupancy.
- 990.114 Phase-down of subsidy for units approved for demolition.
- 990.116 Three-year incentive adjustments.
- 990.117 Determining actual and requested budget year occupancy percentages.
- 990.118 [Reserved]
- 990.119 Transition provisions.
- 990.120 Audit.
- 990.121 Effect rescission.

### Subpart B—Financial Management Systems, Monitoring and Reporting

- 990.201 Purpose—General policy on financial management, monitoring and reporting.
- 990.202 Applicability.

### Subpart C—Project-Based Accounting

- 990.301 Applicability.
- 990.305 Definitions.
- 990.310 Project-based accounting.
- 990.315 Records and reports.
- 990.320 Certifications.
- 990.325 Compliance dates.

### Subpart D—Resident Management Corporations Operating Subsidy

- 990.401 Calculation of operating subsidy.
- 990.402 Calculation of total income and preparation of operating budget.
- 990.403 Adjustments to total income.
- 990.404 Retention of excess revenues.
- 990.405 Use of retained revenues.

AUTHORITY: 42 U.S.C. 1437(g) and 3535(d).

SOURCE: 41 FR 55676, Dec. 21, 1976, unless otherwise noted. Redesignated at 49 FR 6714, Feb. 23, 1984.

EDITORIAL NOTE: Nomenclature changes affecting this part appear at 49 FR 6714, Feb. 23, 1984.

NOTE: It is hereby certified that the economic and inflationary impacts of this regulation has been carefully evaluated in accordance with OMB Circular A-107.

### Subpart A—Performance Funding System

#### § 990.101 Purpose.

*Implementation of Section 9(a).* The purpose of this subpart is to establish standards and policies for the determination of operating subsidy eligibility in accordance with section 9(a) of the U.S. Housing Act of 1937, 42 U.S.C. 1437g. Section 9(a) authorizes the Secretary of Housing and Urban Development (HUD) to make annual contributions for the operation of PHA-owned rental housing (operating subsidy).

[61 FR 17539, Apr. 19, 1996]

#### § 990.102 Definitions.

*Allowable Expense Level (AEL).* The per unit per month dollar amount of expenses (excluding Utilities and expenses allowed under § 990.108) computed in accordance with § 990.105, which is used to compute the amount of operating subsidy.

*Allowable Utilities Consumption Level (AUCL).* The amount of Utilities expected to be consumed per unit per

month by the PHA during the Requested Budget Year, which is equal to the average amount consumed per unit per month during the Rolling Base Period.

*Base Year.* The PHA's fiscal year immediately preceding its first fiscal year under PFS.

*Base Year Expense Level.* The expense level (excluding Utilities, audits and certain other items) for the Base Year, computed as provided in § 990.105.

*Current Budget Year.* The fiscal year in which the PHA is currently operating.

*Formula.* The revised formula derived from the actual expenses of the PFS sample group of PHAs, which is used in PFS, as provided in § 990.105, to determine the Formula Expense Level and the Range of each PHA.

*Formula Expense Level.* The per unit per month dollar amount of expenses (excluding Utilities and audits) computed under the Formula, in accordance with § 990.105.

*HUD Field Office.* The HUD Field Office that has been delegated authority under the U.S. Housing Act of 1937 to perform functions pertaining to this subpart for the area in which the PHA is located.

*Local Inflation Factor.* The HUD-supplied weighted average percentage increase in local government wages and salaries for the area in which the PHA is located and non-wage expenses;

*Long-term vacancy.* This term means the same as it is used in the definition of "Unit Months Available" in this section.

*Operating budget.* The PHA's operating budget and all related documents, as required by HUD, approved by the PHA Board of Commissioners;

*Other income.* Income other than dwelling rental income and income from investments, except the following items are excluded: grants and gifts for operations, other than for utility expenses, received from Federal, State and local governments, individuals, or private organizations; amounts charged to tenants for repairs for which the PHA incurs an offsetting expense; and legal fees in connection with eviction proceedings, when those fees are lawfully charged to tenants.

*Project.* Each project under an Annual Contributions Contract to which PFS is applicable, as provided in § 990.103.

*Project Units.* All dwelling units of a PHA's Projects.

*Projected Operating Income Level.* The per unit per month dollar amount of dwelling rental income plus nondwelling income, computed as provided in § 990.109.

*Requested Budget Year.* The budget year (fiscal year) of a PHA following the Current Budget Year.

*Rolling Base Period.* The 36-month period that ends 12 months before the beginning of the PHA Requested Budget Year, which is used to determine the Allowable Utilities Consumption Level used to compute the Utilities Expense Level.

*Top of Range.* Formula Expense Level multiplied by 1.15.

*Transition funding.* Funding for excessively high-cost PHAs, as provided in § 990.106.

*Unit Approved for Deprogramming.* (a) A dwelling unit for which HUD has approved the PHA's formal request to remove the dwelling unit from the PHA's inventory and the Annual Contributions Contract but for which removal, *i.e.*, deprogramming, has not yet been completed, or (b) a nondwelling structure or a dwelling unit used for nondwelling purposes which the PHA has determined will no longer be used for PHA purposes and which HUD has approved for removal from the PHA's inventory and Annual Contributions Contract.

*Unit months available.* Project Units multiplied by the number of months the Project Units are available for occupancy during a given PHA fiscal year. For purposes of this part, a unit is considered available for occupancy from the date established as the End of the Initial Operating Period for the Project until the time the unit is approved by HUD for deprogramming and is vacated or is approved for nondwelling use. In the case of a PHA development involving the acquisition of scattered site housing, see also § 990.104(b). A unit will be considered a long-term vacancy and will not be considered available for occupancy in any given PHA Requested Budget Year if the PHA determines that:

(1) The unit has been vacant for more than 12 months at the time the PHA determines its Actual Occupancy Percentage;

(2) The unit is not either: (i) A vacant unit undergoing modernization; or (ii) A unit vacant for circumstances and actions beyond the PHA's control, as these terms are defined in this section; and

(3) The PHA determines that it will have a vacancy percentage of more than 3 percent and will have more than five vacant units, for its Requested Budget Year, even after adjusting for vacant units undergoing modernization and units that are vacant for circumstances and actions beyond the PHA's control, as defined in this section. (Reference in this part to "more than five units" or "fewer than five units" shall refer to a circumstance in which five units equals or exceeds 3 percent of the number of units to which the 3 percent threshold is applicable.)

*Units vacant due to circumstances and actions beyond the PHA's control.* Dwelling units that are vacant due to circumstances and actions that prohibit the PHA from occupying, selling, demolishing, rehabilitating, reconstructing, consolidating or modernizing vacant units and are beyond the PHA's control. For purposes of this definition, circumstances and actions beyond the PHA's control are limited to:

(1) *Litigation.* The effect of court litigation such as a court order or settlement agreement that is legally enforceable. An example would be units that are being held vacant as part of a court-ordered or HUD-approved desegregation plan.

(2) *Laws.* Federal or State laws of general applicability, or their implementing regulations. Units vacant only because they do not meet minimum standards pertaining to construction or habitability under Federal, State, or local laws or regulations will not be considered vacant due to circumstances and actions beyond the PHA's control.

(3) *Changing market conditions.* For example, small PHAs that are located in areas experiencing population loss or economic dislocations may face a lack of demand in the foreseeable fu-

ture, even after the PHA has taken aggressive marketing and outreach measures.

(4) *Natural disasters.*

(5) *Insufficient funding* for otherwise approvable applications made for Comprehensive Improvement Assistance Program (CIAP) funds.

(6) *RMC Funding.* The failure of a PHA to fund an otherwise approvable RMC request for Federal modernization funding;

(7) *Casualty Losses.* Delays in repairing damage to vacant units due to the time needed for settlement of insurance claims.

*Utilities.* Electricity, gas, heating fuel, water and sewerage service.

*Utilities expense level.* The per unit per month dollar amount of Utilities expense, computed as provided in §990.107.

*Vacant unit undergoing modernization.* Except as provided in §990.119(a), a vacant unit in a project not considered to be obsolete (as determined using the indicia in §970.6 of this chapter), when the project is undergoing modernization that includes work that is necessary to reoccupy the vacant unit, and in which one of the following conditions is met:

(1) The unit is under construction (i.e., the construction contract has been awarded or force account work has started); or

(2) The treatment of the vacant unit is included in a HUD-approved modernization budget (e.g., the Annual Statement for the Comprehensive Grant Program (CGP) (Form HUD-52837 or its successor), or the Comprehensive Improvement Assistance Program (CIAP) Budget (Form HUD-52825 or its successor)), but the time period for placing the vacant unit under construction has not yet expired. The PHA must place the vacant unit under construction within two Federal Fiscal Years (FFYs) after the FFY in which the modernization funds are approved.

[50 FR 52280, Dec. 23, 1985, as amended at 51 FR 16839, May 7, 1986; 57 FR 4289, Feb. 4, 1992; 59 FR 51854, Oct. 13, 1994; 60 FR 57305, Nov. 14, 1995; 61 FR 7590, Feb. 28, 1996; 61 FR 17539, Apr. 19, 1996]